

FLOYD W. MITCHELL
Claimant

ALLIED SIGNAL

AND

TRAVELERS PROPERTY CASUALTY

Insurance Carrier

AND

Docket No. 223,912

- (1) Did claimant injure or aggravate his back as a result of the work-related accident he sustained on July 21, 1993?
- (2) Did claimant provide timely notice?
- (3) Did claimant provide timely written claim?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing order should be affirmed.

The Appeals Board agrees with the Administrative Law Judge that claimant aggravated his back as a result of the fall he sustained on July 21, 1993. Although the aggravation may eventually resolve and be found only temporary, claimant is entitled to medical treatment under the Workers Compensation Act for such aggravation. Before the fall, claimant's back was in such condition as to permit the Appeals Board to reasonably conclude that the July 21, 1993, accident in which claimant fractured his arm was competent to aggravate his preexisting spondylolisthesis.

The Administrative Law Judge had the opportunity to personally observe claimant testify and assess his demeanor. The Administrative Law Judge found claimant's testimony credible that he aggravated his back symptoms as a result of the accident despite the absence of medical notes indicating claimant immediately complained of back pain. In this instance, the Appeals Board gives some deference to the Administrative Law Judge's determination of claimant's credibility.

Respondent received immediate notice of the accident and referred claimant for medical treatment. Because claimant did not immediately advise respondent that he had injured his back as a result of the accident, respondent and its insurance carrier now contend the notice was defective as to the back. The Appeals Board disagrees. K.S.A. 44-520 requires a worker to notify the employer of an accident which claimant did.

Because respondent and its insurance carrier did not raise timely written claim as an issue to be decided by the Administrative Law Judge, the Appeals Board lacks the authority to address that issue at this time. See K.S.A. 44-555c(a), as amended.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order dated October 21, 1997, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
Bryce Moore, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director